



Office of Governmental Affairs  
P.O. Box 942720  
Sacramento, CA 94229-2720  
Telecommunications Device for the Deaf - (916) 795-3240  
(916) 795-3689, FAX (916) 795-3270

April 18, 2006

## **AGENDA ITEM 4-E**

**TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE**

**I. SUBJECT:** Senate Bill 1273 (Soto) -  
As Introduced

Area Agency on Aging

**II. PROGRAM:** Legislation

**III. RECOMMENDATION:** Neutral, with suggested amendments

This bill would permit the area agency on aging to enter into a contract as a "public agency" with CalPERS upon obtaining a written advisory opinion for the Department of Labor.

**IV. ANALYSIS:**

This bill would define as a "public agency" an area agency on aging for the purposes of contracting with CalPERS for retirement and health coverage. The status of this entity as a "public agency" would be conditioned upon obtaining a written advisory opinion from the Department of Labor that the organization is an agency or instrumentality of state government or a political subdivision thereof.

### **Background**

"Public Agencies" are authorized to contract with CalPERS for retirement and health coverage. A public agency is generally defined as a city, county, district or other local authority or public body of or within the state. Additionally, there are other entities that have been expressly included in the "public agency" definition by the Legislature for purposes of contracting with CalPERS. In order to enter into a contract, the entity must submit documents of origin (such as by-laws) so that a determination can be made that the entity meets the definition of "public agency." CalPERS' staff determines, on a case-by-case basis, whether an entity is a public agency as defined under the general "public agency" definition or whether it is included under one of the specific definitions provided by the Legislature.

In 1998, CalPERS sponsored AB 1166 (chapter 678, 1999) to add the requirement that a public agency advisory opinion from the Department of Labor to address the implications of a non-governmental agency affecting CalPERS' governmental plan status, thereby making it subject to the Employee Retirement Income Security Act of 1975 (ERISA).

In addition, the CalPERS Omnibus Technical Bill of 2001 (AB 1683) made a minor amendment to the law regarding the requirements of the advisory opinion from the Department of Labor. This amendment required the inclusion of specific language in the advisory letter that stated that the organization is an agency or instrumentality of the state government or a political subdivision thereof, rather than state that the entity's participation does not affect CalPERS governmental plan status. This legislation was sponsored by CalPERS and became effective for public agency requests received on or after January 1, 2002.

### **Proposed Changes**

This legislation would amend the Public Employees' Retirement Law (PERL) to authorize "an area agency on aging" to enter into a contract as a "public agency" with CalPERS upon obtaining a written advisory opinion from the United States Department of Labor that the organization is an agency or instrumentality of the state or a political subdivision thereof. If the area agency on aging is unable to obtain this advisory opinion from the United States Department of Labor, it would not be eligible to contract with CalPERS for retirement and health coverage. This protects CalPERS from potentially losing its governmental plan status and thereby being subject to the provisions of the Employee Retirement Income Security Act (ERISA), which can create substantial administrative and program costs.

### **Legislative History**

- 2001 Chapter 793 (AB 1683 Omnibus bill, Committee on Public Employees, Retirement and Social Security) – Amended various sections of the Public Employees' Retirement Law regarding specific language of the advisory letter including that the organization is an agency or instrumentality of the state government or a political subdivision, rather than state that the entity's participation does not affect CalPERS governmental plan status. *CalPERS' position: Sponsor.*
- 2000 Chapter 357 (AB 2285, Florez) - Authorized certain public or private nonprofit corporations that operate a rehabilitation facility for the developmentally disabled to contract with CalPERS for retirement or health coverage, provided that a written advisory opinion is obtained from the United States Department of Labor stating that the rehabilitation facility's participation does not effect the status of CalPERS as a government plan under federal law. *CalPERS' position: Neutral.*

- 1998 Chapter 678 (AB 1166, House) – Required any public agency applying to participate in CalPERS on or after January 1, 1999, to submit a specified opinion from the United States Department of Labor and made other technical and minor policy changes to the Public Employees’ Retirement Law. *CalPERS’ position: Sponsor.*
- 1997 Chapter 304 (AB 658, Scott) - Defined the Western Association of Schools and Colleges as a contracting agency. *CalPERS’ position: Neutral.*
- 1996 Chapter 961 (AB 3133, Firestone) – Defined an auxiliary organization of the California Student Aid Commission as a public agency for purposes of obtaining retirement coverage through a contract with CalPERS. *CalPERS’ position: Watch.*
- AB 2675 (Burton) - Would have defined the Protection and Advocacy agency as a public agency for health coverage purposes. The bill was vetoed by the Governor. *CalPERS’ position: Neutral.*
- 1991 Chapter 404 (SB 137, Thompson) - Defined county fair auxiliary organizations as public agencies. *CalPERS’ position: Support.*
- Chapter 414 (AB 1203, Woodruff) - Amended the definition of “public agency” to include auxiliary organizations of the California State University or the California Community Colleges. *CalPERS’ position: Support, if amended.*
- 1989 AB 4233 (Hughes) would have defined community action agencies as public agencies. The bill was vetoed. The veto message indicates that the Governor felt it was inappropriate to expand the purview of CalPERS to include non-governmental agencies. *CalPERS’ position: Neutral*

## **Issues**

### **1. Arguments by Those in Support**

The author states that this bill would authorize “an area agency on aging” to contract with CalPERS for retirement and health coverage. The status of this entity as a “public agency” would be conditioned upon obtaining a written advisory opinion from the United States Department of Labor that the organization is an agency or instrumentality of the state or a political subdivision thereof.

*Organizations in Support: California Association of Area Agencies on Aging; Council on Aging, Silicon Valley*

2. Arguments by Those in Opposition

There is currently no known opposition.

3. This bill may not benefit all Area Agency on Aging entities

The Welfare and Institutions Code defines an "area agency on aging" as a private nonprofit or public agency designated by the California Department of Aging that works for the interests of older Californians within a planning and service area, and engages in community planning, coordination, and program development and, through contractual arrangements, provides a broad array of social and nutritional services.

The organizational structure of the agency, among other things, plays a role in whether the agency falls under the current definition of "public agency". For example, a 501(c)(3) non-profit corporation that does not consist of a public authority or public body would not likely qualify as a public agency. In contrast, there may be other agencies on aging that may be considered public agencies, because they were created through a Joint Powers Authority or are associated through a County.

If an area agency on aging does not meet the general public agency definition, it would be required to obtain an advisory opinion from the United States Department of Labor that the organization is an agency or instrumentality of the state or a political subdivision thereof to contract with CalPERS.

4. Legislative Policy Standards

The Board's Legislative Policy Standards suggest a Neutral position on proposals which do not significantly affect the benefit interests of our stakeholders and which do not significantly impact CalPERS' benefits or the administration of the system. Staff recommends this bill be amended to clarify that this legislation will affect only area agencies on aging that are non-profit organizations.

**V. STRATEGIC PLAN:**

This item is not a specific product of the Strategic Plan, but is part of the regular and ongoing workload of the Office of Governmental Affairs.

**VI. RESULTS/COSTS:**

**Program Costs:**

This bill will not create additional program costs.

**Administrative Costs:**

This bill will have minimal administrative costs.

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Lisa Marie Hammond, Chief  
Office of Governmental Affairs

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Jarvio Grevious  
Deputy Executive Officer  
Benefits Administration

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Kathie Vaughn  
Assistant Executive Officer  
Member and Benefit Services